
Appeal Decision

Hearing held on 21 January 2014

Site visit made on 21 January 2014

by Sukie Tamplin Dip TP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 January 2014

Appeal Ref: APP/Z3825/A/13/2202096

92-98 Hurst Road, Horsham, West Sussex RH12 2DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Churchill Retirement Living against Horsham District Council.
 - The application Ref DC/13/0255 is dated 11 February 2013.
 - The development proposed is redevelopment to form 33 sheltered apartments for the elderly including communal facilities (Category II type accommodation), access, car parking and landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused for redevelopment to form 33 sheltered apartments for the elderly including communal facilities (Category II type accommodation), access, car parking and landscaping at 92-98 Hurst Road, Horsham, West Sussex RH12 2DT

Application for costs

2. At the Hearing an application for costs was made by Horsham District Council against Churchill Retirement Living. This application is the subject of a separate Decision.

Main issues

3. The main issues in this appeal are the effects of the proposed development on:
 - the street scene of Hurst Road and North Parade
 - the protected Turkey Oak
 - the supply of housing, and in particular affordable housing, in Horsham District.

Background

4. The application site is located on the corner of two principal roads (Hurst Road and North Parade) leading into the town centre of Horsham. There is agreement that the site, currently comprising 2 pairs of semi-detached 2 storey houses, is in a sustainable location and that the principle of residential re-development for sheltered housing is in accordance with adopted policy.

5. The appeal is a 'failure' case but was considered by Horsham Development Management Committee North on 1 October 2013 when it was resolved that, had the Council been in a position to determine the application, permission would have been refused on 2 grounds. This would have been firstly, on matters relating to character and appearance, and secondly, because of an absence of contributions to infrastructure and affordable housing.
6. A completed Unilateral Undertaking (UU) was provided at the Hearing and the Council indicated that this would overcome the second putative reason for refusal.

Reasons

Character and appearance

7. Around the appeal site the character of Hurst Road and North Parade is residential. Although most development appears to date from the Victorian period, there have been several recent redevelopments. To the east of the site a large apartment block (Northbrook Court-14 units) has been constructed at no.90 Hurst Road on a site previously occupied by Horsham College of Arts and Crafts. Adjacent and to the north of the site alongside North Parade, is the recently completed Wyndham Hall comprising 11 flats. North Parade is a wide tree-lined boulevard, with mainly 3 storey buildings along the east side and two storey housing on its west side. The development is generally screened from the heavily trafficked road by walls, trees and other vegetation.
8. Along North Parade the appeal site is enclosed by a brick wall and a line of trees, many of which are evergreen and relatively substantial. On the Hurst Road frontage the existing houses are not prominent because of the combination of their modest mass and height and the road side screening. Thus looking eastwards along Hurst Road development is masked and softened by vegetation and trees. Individually, the buildings in the street generally show a high standard of design and detailing and this is acknowledged in the local listing of several of the properties. By contrast, the new development at no 90 is more prominent in the street scene and is greater in terms of mass than other buildings along this length of Hurst Road. I acknowledge that buildings further to the east are larger scale but these have a different function and character, and include community facilities such as a college and hospital.
9. The character of this part of Hurst Road was described in a 2009 appeal decision concerning the redevelopment of the adjacent site at no 90, as being of "residential buildings of different sizes although none appear particularly substantial from views in Hurst Road"¹. The Inspector differentiated between the eastern end and its community buildings and the western end characterised by residential development. This description is relied upon by the appellant, albeit that no 90 has now been redeveloped following a subsequent permission. I agree with the description of the area given by the previous Inspector and the evidence provided to this Hearing in respect of the footprint of buildings in the residential part of Hurst Road confirms that the development hereabouts tends to be modest in size and form.
10. By contrast the proposed building would have an elevational length facing Hurst Road of about 31m; this would be considerably greater than the 21m

¹ Appeal ref APP/Z3825/A/2089361

frontage of Northbrook Court, currently the most dominant building. But because the proposed building would be on a prominent corner, views looking northwards along North Parade would be of both frontages and the 4 storey corner gables. The return elevation, which would be closer to North Parade than the existing development, would be about 32m in length and would extend almost to the rear of the plot. However, I accept that because it is proposed to retain the trees along North Parade these trees would mask and soften part of the west elevation, although the upper storeys would be visible above the foliage.

11. Nevertheless from both streets the building would appear disproportionately massive, being both long and high in comparison with others in the locality. The prominence of the building would be exacerbated by the uncomfortable corner gables and the awkward roof line. I agree that the building would be articulated but this appears disconnected and fussy and would not be effective in reducing the overall bulk or softening the visual impact of the excessive length and height of the building seen through and above the railings that would replace road side hedging. Delancey Court, which stands at a corner to the north of the appeal site, is not comparable because the bulk of that building is broken up and appears to be significantly lower. It also stands well back from the North Parade frontage. Neither do I agree that the height of the eaves should be the determining factor as that is just one element of the total bulk of the proposed building.
12. The harm arising from the excessive bulk of the building would be compounded by the disappointing design, described by the Horsham Society as a “mish-mash seemingly aimed at incorporating every material and style to be found in neighbouring buildings, good and bad”. The composition of the main elevations would be restless and lacking balance with an overly complex and visually incoherent roof line involving a multiplicity of roof forms, features and pitches.
13. For these reasons I find that the effects of the proposed development on the street scene of Hurst Road and North Parade would be seriously harmful. Thus the development would conflict with criteria (c) and (d) of Policy DC9 of the *Horsham District General Development Control Policies 2007* (DCP) and the aims of Policy CP3 of the *Horsham District Local Development Framework Core Strategy 2007* (CS). The National Planning Policy Framework (the Framework) attaches great importance to the design of the built environment and confirms that this is a key aspect of sustainable development. Because the development would fail to contribute positively to making places better it would not comprise sustainable development. Accordingly this first main issue weighs heavily against permission.

Trees

14. At the north east corner of the site is a Turkey Oak which is the subject of a Tree Preservation Order (TPO). It is common ground that this is a magnificent tree which makes an important and positive contribution to the character and quality of the area. The tree is already 25m in height and is clearly visible above the roofs of the semi-detached housing currently on the site. It is also an important feature in North Parade where it provides a particularly attractive feature to the south of Wyndham Hall as it is seen across the existing rear gardens of 92-98 Hurst Road.

15. There was a lack of consensus regarding the eventual height of the tree but it was agreed that it is semi-mature and is unlikely to grow more than another 1-5m. I heard that the tree is more vigorous and upright than an English Oak and also has a lighter canopy. The crown of the tree has been lifted and the canopy starts at about 6-7m above ground level. The rear of the proposed building, which has an eaves height of about 10m, would be constructed on the west and south sides of the tree. It was agreed by the parties that, subject to suitable ground protection and management, the root protection area of the tree would not be damaged by the construction works and thus the health and shape of the tree in the short term should not be at risk.
16. I agree that because the footprint of the eastern end of the proposed building would be further from the common boundary with Northbrook Court, this would open up a view from Hurst Road towards the north east corner of the site and the Turkey Oak. But I consider that this benefit would be outweighed by reduced views of the tree from other locations. At present the stately tree rises above the houses. Because of its size, the tree would also be significantly taller than the proposed sheltered housing block but, due to the effect of perspective, its contribution to Hurst Road would be significantly reduced. Similarly, the clear view of the tree from North Parade would be lost because of the closing of the gap between Wyndham Hall and the sheltered housing block. Although glimpses would remain, the full impact of the form and extent of the canopy would not be visible post-development.
17. The Council are also concerned that the new development would heavily box-in the tree, adversely affecting its amenity value. I agree that this impressive tree would be better appreciated in the current more open environment and its form and stature would be crowded by the proximity of the proposed building. Thus the contribution of the protected tree to the amenity of the area would be significantly diminished.
18. The outdoor patio area for the occupiers of the proposed development would be located north and east of the 3-4 storey rear and side elevations of the proposed building and partially under the canopy of the Turkey Oak. The appellants have not undertaken an assessment of the shading effect of the building and their architect was unable to help me with this at the Hearing. But it seems to me that there is a high probability that the shading from the tall building proposed would seriously affect a significant part of the sole or primary amenity area. I accept shade can be welcome in high summer, and also that dappled shade can be attractive. But, because only limited sunshine would penetrate to the garden, the shade would be likely to be dense rather than dappled. Moreover because the amenity area would be likely to be significantly shaded by the proposed bulk of the building there is a high probability that for much of the year this facility would not be attractive for passive recreation. Because this is the only such outdoor patio area for the entire development this in turn would be likely to lead to pressure to remove or reduce the tree.
19. The proposed apartments are almost all single aspect. In terms of the north and east facing apartments the bottom 2 floors would be below the main canopy level and thus sky views would be very limited. For the occupants of the top 2 storeys the sole outlook out of the north and east facing apartments would be looking directly towards the canopy which would be located about 3m distant. Thus the perception would be likely to be that the tree reduces the amount of daylight in most or not all the apartments facing north and east.

The appellants say that the tree is an important asset to the site and purchasers of the apartments would be aware of the proximity of the tree but, relying on guidance², the Council says that the tree is likely to be subject to post-development pressure for pruning or removal.

20. Whilst I acknowledge that there are controls over works to the Turkey Oak because the tree is protected, I consider that such requests for tree work would be difficult to resist. This is because of the proximity of the large tree to the proposed apartment block and its perceived effect on the usability of the dedicated amenity space and patio for the elderly residents. I do not accept the view of the appellants that post-development pressure is unlikely and my assessment is supported by evidence provided by a neighbour, that occupation of an adjacent development was closely followed by an application for works to a protected tree. In the proposal before me I consider that, because of the height and spread of the tree, together with the likely shadowing resulting from the building, there would be, on the balance of probability, pressure for works to this tree. Post-development, only works to the tree would appear to be a possible solution if residents find their flats appear gloomy or the amenity space is, as described by the Council's arboricultural officer, tenebrous and dank.
21. Accordingly because the proposed development would jeopardise the positive contribution of the protected tree I find that the effects of the proposed development on the Turkey Oak would be unacceptable. Thus the development would be in conflict with criterion (f) of DCP Policy DC9 and this second main issue also weighs heavily against permission.

Housing supply

22. The Framework says that housing applications should be considered in the context of the presumption in favour of sustainable development. Moreover policies for the supply of housing should not be considered up-to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites³.
23. The Council rely on the analysis of housing land supply emanating from the South East Plan (SEP). Although this has now been revoked it was found, in a recent appeal decision⁴, that the SEP housing requirement figures are the most recent to have been tested through an examination process. That decision also concluded that the evidence base for the requirement is not undermined by the revocation of the SEP. The Council accepts this approach and agree that this is a robust method for assessing the supply of housing land in the District. Accordingly it is common ground that Horsham District cannot demonstrate a 5 year housing land supply and there is a shortfall of about 2000 units for the period to 2017. Within the total shortfall there is a substantial shortage of affordable housing, described by the Council at the Hearing as critical. Both these factors are significant in this appeal.
24. Taking affordable housing first, CS Policy CP12 says that residential developments of 15 dwellings or more will be expected to include an appropriate proportion of affordable homes, with the target being 40% of the

² BS 5837:2012 Trees in relation to design and construction, and Tree Preservation Orders and a guide to the Law and Good Practice (DETR March 2000)

³ Paragraph 49 of the National Planning Policy Framework

⁴ Appeal ref APP/Z2825/A/12/2183078 dated 18 April 2013: Land east of Daux Avenue

total. In this case that would equate to about 13 affordable units. The Council agree that, in the case of sheltered housing, an off-site contribution would be appropriate. The UU provides for an off-site contribution of £87,275 towards affordable housing. However, the Council also accept that any greater contribution would render the development unviable. But, when measured against the target sought by adopted policy, and in the light of a critical shortage of affordable housing, the benefit to the supply of affordable housing would be very limited and probably would result in the delivery of only about 1 unit. Thus this would be a benefit which would have very limited weight.

25. As to the total housing shortfall, there is currently a disproportionate lack of supply of 1 and 2 bedroom units; here the development would provide 33 small units. This would make a significant contribution towards meeting the small unit shortfall, although 4 family sized houses would be lost in the re-development. Thus this benefit should be considered in the context of sustainable development, particularly as housing targets are not being met.
26. I have been referred to a previous appeal⁵ (The Daux appeal) where the Inspector concluded that the benefits flowing from the contribution towards addressing the housing supply shortfall and the shortfall in affordable housing were determinative. But the appeal before me is significantly different. Firstly in the Daux appeal, 18 affordable housing units were proposed on-site which met the 40% target in CS Policy CP12 and represented a significant increase in delivery. This is not the case in this appeal where the benefit that would arise from the facilitation of affordable housing is very limited, and may be delayed because delivery would be off-site. Secondly there is evidence that the layout was adjusted in the Daux appeal following an earlier unsuccessful appeal in order to reduce pressure from householders to fell or lop trees⁶. In the case before me I have concluded that there is a tangible risk to a particularly impressive protected tree. Thirdly, it was concluded in the Daux appeal that there would be limited visual impact, whereas there would be serious visual harm arising from the current appeal proposals.
27. Accordingly, I agree, on the one hand, that the benefit of the provision of 33 small units on the delivery of housing is a tangible and positive benefit which would help to address the shortfall in the Councils targets for housing in the District. But, on the other hand, this benefit is tempered by the limited opportunities for the delivery of affordable housing in association with the appeal proposals. On balance this third main issue weighs in favour of permission.

Conclusions

28. I acknowledge that the appeal proposals would provide housing in a sustainable location for elderly residents in the District and this would be of a type which is in short supply. Moreover the demographic profile of the District indicates that the demand for this type of accommodation is likely to increase in the future and the provision of specialist housing can have a beneficial 'knock-on' effect on the housing chain and is an efficient use of land and resources. Given the shortage in housing supply in the District I give great weight to the delivery of housing, although this weight is tempered by the limited delivery of affordable housing for which there is critical need.

⁵ Paragraph 52: Appeal ref APP/Z2825/A/12/2183078 dated 18 April 2013: Land east of Daux Avenue

⁶ Paragraph 23 Appeal ref APP/Z2825/A/12/2183078 dated 18 April 2013: Land east of Daux Avenue

29. The appeal site before me is already in residential use and the Council has no objection to the principle of re-development at a higher density. However I heard that prior to the appeal for non-determination positive progress had been made towards agreeing amendments to the scheme which could have overcome the issues with the current proposals. Thus it seems to me that there is a realistic prospect of permission for an alternative proposal on this site that would entail commensurate benefits of housing delivery, without the visual harm that would arise from the current scheme. This is a factor which has significant weight because it appears that other proposals could help redress the housing shortage.
30. In coming to my conclusion I have taken account of all other matters raised. But in assessing the appeal proposals I have concluded on the first two main issues that the scheme would be seriously harmful to the street scene and the future of a magnificent protected tree. Sustainable development has three dimensions and the Framework says that these should be sought jointly and simultaneously through the planning system. Because there would be serious and demonstrable harm to the environment I do not agree that the proposals amount to sustainable development. Thus the weight I give to the benefit of delivering housing is also tempered by the environmental harm I have identified.
31. For all the reasons I have given and because there is a realistic prospect of an alternative proposal to deliver housing, without the attendant visual harm, I conclude, on balance, that the appeal should be dismissed.

Sukie Tamplin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Chris Carey BA(Hons) MRICS	Strategic Land and Property Officer, Horsham
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INTERESTED PERSONS:

Cllr Leonard Crosbie,	Ward Member
G L P Hamilton	Local Resident
Jean Fadil	Local Resident
Michael Fadil	Local Resident
Mary Crosbie	Local Resident
Michael Hall	Local Resident
Helen Bradley	Local Resident
Kenneth Clark	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Completed Unilateral Undertaking and associated documents
- 2 List of suggested conditions submitted by the Council
- 3 Policy DC 31: Horsham District General Development Control Policies 2007
- 4 Bundle letter and emails between the Council, Greg Hilton (Planning Issues on behalf of Churchill Retirement Living) and DVS (on behalf of Horsham District Council): Draft Review of Development Viability Assessment: September-November 2013

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